

Discusses tax obligations related to the sales and leases of satellite equipment and programming services and servicing of the satellite equipment. See 86 Ill. Adm. Code 130.220 (This is a GIL.)

October 19, 2005

Dear Xxxxx:

This letter is in response to your letter dated February 4, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC markets and sells satellite equipment. In various markets we have contracted a third-party installation broker to initiate the installation and service of the satellite equipment. Ultimately the sales agreement is between the customer and ABC.

We are registered to do business in several states and have made every effort to insure that we are taxing our customers correctly. Unfortunately on several occasions we have received contradicting answers from various state revenue departments.

In an effort to eliminate any questions regarding taxation to our customers, below is a recap of scenarios that require clarification. **Please respond to the following in writing for our files.**

In most cases, the equipment received by the customer is leased from the satellite service provider. However, due to the cost of the equipment ABC purchases the equipment and is then reimbursed once the equipment is activated. When we invoice our customers we discount the full cost of the equipment based on a 12 or 24 month programming commitment from the customer. The customer then pays a monthly taxable rental fee for the equipment on their monthly programming bill. The customer is not charged sales tax for the leased equipment by ABC when their system is installed.

1) Upon installation customers pay an activation fee for the programming package that they purchased.

In your state please verify whether this activation fee is taxable or non-taxable to the customer.

2) In the event that we sell a promotion to customer where the equipment is purchased rather than leased, the equipment is still fully discounted to the customer with a 12 or 24 month programming commitment. We understand that if the customer purchases satellite equipment or supplies without a programming commitment the sale is taxable.

In your state please verify whether the equipment is taxable or non-taxable to the customer if they purchase the equipment that is fully discounted.

3) The installation broker charges out of area fees if we sell to a customer outside of a specific mile radius. We charge customers out of area fees if they are located outside of that radius. The out of area fee is specified separately on the customer invoice.

In your state please verify whether the out of area fee is taxable or non-taxable to the customer.

4) If we service a satellite system that is not under warranty customers are charged a flat fee for service.

In your state please verify whether the service fee is taxable or non-taxable to the customer.

Thank you in advance for your help. If you have questions regarding the above information, please call me. You may fax your response or mail to the above address.

DEPARTMENT'S RESPONSE:

We apologize for the delay in responding to your letter. Based on the limited information provided and in the context of a general information letter, we cannot determine the specific liabilities of the parties. However, I hope the following information is helpful.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101.

Your letter states that in most cases you lease the satellite equipment. Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax. A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property

located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

You have asked whether certain fees such as activation fees or out of area fees are taxable. For information on this matter, please see 86 Ill. Adm. Code 130.450 entitled "Installation, Alteration, and Special Service Charges".

Please see the provision on warranty repairs at 86 Ill. Adm. Code 140.141 for the taxability of repairs both in an out of the warranty context.

For further information concerning satellite equipment, please see General Information Letter ST 04-0165 on our website.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. The rules cited in this letter can be found on the Department's website. Once on the website, click on "Legal Research". Then click on "Regulations." If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk